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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAYANA CORDOVA,

Defendant and Appellant.

D071710

(Super. Ct. No. SWF023165)

APPEAL from a judgment of the Superior Court of Riverside, F. Paul Dickerson III, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr. and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Dayana Cordova of first degree murder, carjacking, kidnapping, and child endangerment. She was 16 years 10 months old when she committed these

crimes. The superior court sentenced Cordova to life without the possibility of parole (LWOP) for the first degree murder based on the special circumstance finding applicable to felony murder, plus a determinate term of eight years for kidnapping and one year four months for child endangerment.

In a prior appeal (*People v. Cordova* (Sept. 14, 2011, D057174) [nonpub. opn.]) we affirmed Cordova's conviction but modified the judgment to reduce certain fines.

In March 2016, the superior court granted relief under Cordova's petition for a writ of habeas corpus for a resentencing hearing pursuant to *Miller v. Alabama* (2012) 567 U.S. 460 (*Miller*). Cordova and the People each filed sentencing briefs with extensive accompanying exhibits. At the hearing, the superior court heard testimony from a defense psychologist and argument by both parties. The next day, the court, considering the factors set forth in *Miller*, reimposed an LWOP sentence.

Cordova appeals, contending her LWOP sentence was improper. She argues the sentencing court prejudicially erred in finding that she was permanently incorrigible, exhibited irretrievable depravity, and was incapable of rehabilitation. She also asks us to create a new constitutional rule in juvenile sentencing that no minor who aids and abets a murder should be sentenced to LWOP.

We determine that Cordova's assertions lack merit. We conclude that the sentencing court correctly followed the factors set forth by the United States Supreme Court in *Miller, supra*, 567 U.S. 460 and as explained in *Montgomery v. Louisiana* (2016) 136 S.Ct. 718 (*Montgomery*). We also are satisfied that the sentencing court did not abuse its discretion in finding Cordova was one of the rare juvenile offenders for

whom an LWOP sentence was warranted. Finally, we decline to create a new rule of constitutional law as urged by Cordova. Especially considering the facts of this case, we do not conclude that a sentencing court is categorically prohibited from sentencing a juvenile who aids and abets a murder to LWOP. There is no California or federal authority that supports that proposition, and we decline to further extend the United States Supreme Court's Eighth Amendment jurisprudence. As such, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Facts Adduced at Trial

We repeat portions of the factual background from our opinion in Cordova's previous appeal.

"At about 9:30 p.m. on October 18, 2007, Angelina Arias was shot in the head while she was sitting in her car. Arias was pushed out of the car and left lying on the road. The shooter (Salinas, age 15) and her friend (Cordova, age 16) left the scene in Arias's car, with Arias's one-year-old child still in the car. The next day Salinas was arrested after she was observed driving Arias's car. Cordova was arrested at her home.

"In recorded interviews with the police, defendants admitted their involvement in the incident. Defendants told the police that they decided to carjack a car at gunpoint so they could drive to Los Angeles and go to an amusement park. With this plan in mind, Cordova took her father's gun and loaded it. Defendants went to a grocery store, where they approached a man in the parking lot and asked him for a ride. The man agreed and dropped them off at a park; they did not carry out the intended carjacking in this instance.

"Several hours later, victim Arias saw defendants waiting outside near the restaurant where Arias worked, and offered them a ride. Defendants accepted the ride. Arias first drove with defendants to pick up her one-year-old daughter, and then drove to a location where Salinas stated they wanted to be dropped off. When the car was stopped, Salinas, sitting in the back seat, shot Arias twice, wounding her in the head and neck area. Defendants pushed Arias out of the car, left her lying on the street, and drove away with the child. Neighbors came out to the street where Arias was lying and called 911.

"After the shooting, Salinas and Cordova drove the victim's child to a neighboring town, placed the child on a stranger's front porch, rang the door bell, and left. Patricia Guillermo, who lived there, was not home at the time, and she did not find the baby until several hours later. Guillermo's 12-year-old son was at home; he called his mother and told her that he heard the door bell ring and a baby crying. Guillermo told him maybe it was the neighborhood children. Guillermo did not tell her son to open the front door, and although there was a peephole in the door, there was no window that provided a view of the front area of her home. When Guillermo came home about four hours later, she found the child sitting in front of her door and she called the police.

"Arias died from the gunshot wounds, and defendants were charged with murder. Two juries were empaneled to hear the case against defendants. The juries heard the case together, except they were separated for some purposes, including hearing the recorded police interviews with defendants, instructions, and closing arguments. The police interviewed each defendant separately, and then interviewed them together. The Salinas

interview was played for the Salinas jury; the Cordova interview was played for the Cordova jury; and the joint interview was played for both juries."

2017 Resentencing

In early 2016, Cordova filed a petition for a writ of habeas corpus, arguing for a resentencing hearing under *Miller, supra*, 567 U.S. 460. The court agreed with Cordova and granted her the requested relief.

A resentencing hearing was held on January 5, 2017. Before that hearing, Cordova submitted a sentencing brief along with 17 exhibits. She subsequently submitted an amended sentencing brief with the same 17 exhibits. In the amended brief, Cordova framed the issue before the court: "[I]s [she] amongst the rarest of juvenile offenders whose crime reflects permanent incorrigibility upon consideration of the *Miller* factors and the available evidence not presented by previous counsel at her original sentencing." To support her position, Cordova addressed the five factors the United States Supreme Court discussed that a sentencing court should consider before sentencing a juvenile to LWOP for a homicide offense: (1) the juvenile's chronological age and its hallmark features; (2) the juvenile's family and home environment; (3) the circumstances of the offense; (4) the juvenile's ability to deal with police and prosecutors as well as the juvenile's capacity to assist his or her attorneys; and (5) the juvenile's possibility of rehabilitation. (*Miller, supra*, 567 U.S. at pp. 477-478.)

Regarding her age, Cordova argued in her sentencing brief that she was 16 years old at the time of the crime and her adolescent brain was " 'not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning

ahead, and risk avoidance.' " Cordova additionally pointed out that she struggled in school, possessed a "below average range" of intelligence, and her language development and deductive reasoning reflected that her level of general knowledge, spoken language development, and deductive reasoning skills were below average. Cordova also had " 'low self-esteem and difficulties socializing with others' " that resulted in her " 'associating with a negative peer group' " at the time of the offense.

In the sentencing brief, Cordova referenced a report written by Kristina Malek, a clinical and forensic psychologist. In that report, Malek explained that adolescents " 'have more difficulty [than adults] delaying impulses long enough to consider alternatives and consequences.' " Further, according to Malek, adolescents " 'often compare themselves to their peers and evaluate the reactions they receive from others in an attempt to better understand themselves and their status among others.' "

In addition, Cordova discussed her home life and family environment.¹ She underscored that she was raised in a "dysfunctional family system." Cordova was physically and psychologically abused by her father and sexually abused multiple times, beginning at age five. Cordova also used alcohol and drugs (including marijuana, cocaine, and methamphetamine). Her "teenage years involved a vicious cycle of struggling in school, neglect, abuse, and rebelling." Further, "[t]he year prior to

¹ In doing so, the sentencing brief referenced the statements of Cordova's mother, father, and brother; Cordova's juvenile mental health records; a report by Joy Smith Clark (a clinical psychologist); and Malek's report.

[Cordova's] arrest, there was a lot of tension and her parents argued over [Cordova] constantly."

In discussing the circumstances of Cordova's homicide crime, Cordova focused on her lack of a criminal record in comparison to Salinas, who had been arrested twice for assault and auto theft, was gang affiliated, and sold drugs. Cordova also claimed that her involvement in the homicide crime was somewhat minimal. For example, Cordova admitted that she suggested using a gun to carjack someone, but contended the gun was "to instill fear" but the plan changed later. Cordova asserted that Salinas suggested a change in plan to kill the carjack victim, but Cordova did not agree to this change as evidenced by her failure to shoot the man that gave Cordova and Salinas a ride from the grocery store. Also, Cordova insisted that she did not want to accept a ride from Arias, but relented after Salinas accepted the ride. Although Cordova admitted that she did not do anything to remove herself from the situation, she insisted that she did not do anything to encourage Salinas to shoot Arias. The sentencing brief argues Cordova was "startled" by the shots that killed Arias, and that she only helped Salinas push Arias's body out of the car and drop the body at a stranger's doorstep. Further, in the sentencing brief, Cordova emphasized that after the murder of Arias, she "quickly used drugs" and did not take any of Arias's clothes or money, unlike Salinas.

Cordova additionally maintained that her ability to deal with law enforcement officers and prosecutors as well as effectively assist in her own defense supported a new sentence. She pointed out that she had never been arrested before the homicide offense; thus, she was unfamiliar with the criminal justice system. Cordova did not comprehend

the serious punishment she faced as evidenced by her comments that she could "go back home." She appeared to be concerned about the police finding drug paraphernalia in her room and certain items on her cell phone more than the consequences of her involvement in killing Arias. In the sentencing brief, Cordova contended that she could not assert herself during a critical part of her questioning when the detective asked her whether she encouraged Salinas to shoot Arias. Additionally, Cordova argued that she could not help her attorney in negotiating a plea agreement.²

Cordova also focused on the possibility of rehabilitation in her sentencing brief. In doing so, Cordova emphasized her "significant gains" while serving her sentence. For example, in juvenile hall, Cordova attended therapy and improved her grades. Cordova became a mentor and participated in aggression replacement therapy training and moral reasoning and social skills training. Cordova claimed that she "made significant gains in her insight and showed significant remorse." In support of this position, the sentencing brief referenced Clark's report. In that report, Clark observed that Cordova wanted to be truthful about the homicide offense and that she could not stop thinking about Arias and what she and Salinas did to her and her family. The sentencing brief also referenced other materials bearing on Cordova's remorse of having committed the homicide offense.

The People submitted a sentencing brief in which they too discussed the five factors relevant to sentencing a juvenile. Regarding Cordova's age, the People

² Although Cordova's sentencing brief stated that Cordova could not effectively assist her attorney in securing a plea agreement, the brief acknowledged that it was "unclear" if any offers were ever seriously considered by the prosecution.

emphasized that she was nearly 17 years old at the time of the offense and "was living like an adult." To this end, the People pointed out that Cordova was living life like an adult by coming and going at home as she pleased, ditching school, abusing drugs and alcohol at her leisure, and being involved in two serious sexual relationships. The People also took issue with the characterization of Cordova having the intellectual ability of a 10 and one-half year old as argued in Cordova's sentencing brief. The People asserted that this conclusion was based on Clark's evaluation of Cordova and the Kaufman Brief Intelligence Test she administered to Cordova. However, the People noted that Clark stated that Cordova's score on that test was likely affected by the fact that Cordova "did not know English when she started school." Indeed, Clark concluded that Cordova's "actual intellectual ability is most likely within the Average range of functioning."

The People acknowledged that Cordova reported a difficult home environment, but argued that Cordova's parents did not condone or encourage Cordova's illegal behavior. In fact, the People observed that Cordova's parents attended school meetings, attempted to correct her behavior, encouraged her to attend school, and even moved to a new area to give Cordova a "fresh start."

In discussing the circumstances of the crime, the People emphasized that both Salinas and Cordova planned to kill a person to obtain a car so they could travel to an amusement park. The People asserted that Cordova played a critical role in the crime by: (1) supplying the gun that Salinas used to kill Arias; (2) supplying the ammunition for the gun; and (3) teaching Salinas how to shoot the gun. The People further maintained that Cordova actively participated in the planning of the homicide offense by selecting the

first victim, discussing shooting that victim, and taking up a position in the car (the backseat of the car) where Cordova could shoot the man. However, "a combination of cold feet as well as a mistake in the execution of their plan, led [Cordova and Salinas] to abandon their plan."

Nevertheless, the failure ultimately did not thwart Cordova and Salinas's plan. Cordova directed Salinas's attention to Arias's car and later alerted Salinas that the car belonged to a female. After Arias offered the girls a ride, the People insist that Cordova "actively and repeatedly encouraged Salinas to commit the crime." Not even the presence of Arias's baby in the backseat next to Salinas deterred Cordova and Salinas from their plan as they instructed Arias to drive them past Cordova's house to a dark street. When the car stopped there, Salinas shot Arias twice and then they dumped Arias's body out of the car and drove off with the baby. The People also noted that Cordova lied to the police and changed her story multiple times regarding how Arias was killed.

The People also discussed Cordova's sophisticated approach to dealing with the police as she lied and omitted critical facts to cover up her involvement in the crime.

Finally, the People maintained that they had not seen any evidence of "a sincere expression of remorse from Cordova."

Underlying the People's argument that Cordova should be properly sentenced to LWOP was Cordova's interaction with the police and Salinas when she was questioned about the crime. In their sentencing brief, the People often cited to Cordova's statements,

arguing that her statements were relevant to all the *Miller* factors. As such, a summary of Cordova's statements are necessary to our analysis here.

Cordova and Salinas were interviewed by the police separately and then together. The detectives also recorded the conversations between Cordova and Salinas each time the detectives left them alone together in the interview room.³

Detective Darren Wills, the officer who interviewed Cordova and Salinas, testified that Cordova's story changed several times over the course of her individual interview. Based on the changing story, as well as her demeanor and body language during the interview, his knowledge of the case, and admissions Cordova made in the joint interview with Salinas, Wills opined Cordova deliberately withheld information during her individual interview. In contrast, Salinas was so forthcoming that Wills was "kind of surprised" by her frankness.

In her initial individual interview, Cordova began by blaming Salinas for the offense. She claimed Salinas simply showed up at Cordova's house in Arias's car. Wills admonished Cordova to be honest and asked her to begin again.

During the joint interview, Cordova was confronted with details Salinas provided during her interview. In response, Cordova changed her story again and admitted that her

³ The jury at Cordova's trial heard Cordova's interview, the joint interview, and the conversations between Cordova and Salinas. Salinas's individual interview was not played for the jury at Cordova's trial. Moreover, the superior court, when considering the resentencing of Cordova, did not consider Salinas's individual interview. As such, we do not include any discussion of that interview.

involvement in the planning and the murder was considerably greater than she had intimated in her individual interview.

Cordova then said that she and Salinas were waiting outside a market for a ride that failed to materialize. Arias offered them a ride home. They accepted, and then during the ride, Salinas "hurt" Arias. They left Arias, took her car, drove around, and then Cordova went home. Wills again suggested Cordova was not being forthcoming and urged her to tell the truth.

Cordova then gave a third version of events. She said she and Salinas saw Arias's car outside a restaurant. Salinas exclaimed, "We gotta get that car." Cordova went along with Salinas, but she had no idea Salinas would hurt anyone. When Arias offered Cordova and Salinas a ride, Salinas accepted and urged Cordova to join her. Cordova acquiesced. When they drove away from the restaurant, Salinas shot Arias.

Again, Wills told Cordova that he did not believe she was telling the whole story. He said he had been investigating the murder for the past 24 hours and suggested he already knew exactly what happened. He urged Cordova to tell the truth.

In response, Cordova gave a fourth version of events. She said that she and Salinas were looking for a nice car when they spotted Arias's car. She claimed, however, that only Salinas wanted to steal the car. Arias pulled up in her car and offered the girls a ride. Salinas accepted and they got in.

At some point, Cordova told Arias to drop them off near some houses, but Salinas directed her to a darkened street. Arias stopped the car, and when Cordova started to get out, she heard a gunshot.

Wills praised Cordova for being more forthcoming. He offered her water and made sure she was comfortable. Cordova began to provide more details.

Cordova said Salinas got the idea to "take" a car, and Cordova went along with the plan. They went to a grocery store near Cordova's house to steal a car, but Cordova "wasn't really down to doing' what [Salinas] wanted to do," which was to "scare" someone with a gun, take his car keys, and leave. Cordova claimed she knew nothing about the gun until they arrived at the grocery store, and she had no idea Salinas intended to fire the weapon. Later in the interview, however, Cordova admitted the gun belonged to her father, and she retrieved it from his room, loaded it, and brought it to the grocery store parking lot for the carjacking.

Cordova explained that she and Salinas were looking for victims for about an hour, when she saw a man park a black car. While the man was in the store, Cordova and Salinas plotted to shoot him and take his car. Cordova admitted she and Salinas formed the plan together, but then she equivocated, claiming it was Salinas's idea to shoot the man, and Cordova attempted to dissuade Salinas from doing so. Cordova claimed she objected that killing was "really bad," although she ultimately went along with the plan.

Cordova said that when the man came out of the store, Salinas tried to make Cordova ask him for a ride, but she refused. Therefore, Salinas asked him instead. When the man stopped his car as Salinas requested, Salinas got out, then turned and looked at Cordova and "blinked" at her. Cordova could not shoot the man, so she simply thanked him for the ride and got out.

The two looked around for another victim without success. Eventually, Salinas grabbed the gun out of the purse, put it in her jacket pocket, and announced, "I'm gonna get a car right now[.]" She suggested that they find a car worth their trouble.

Salinas handed the gun to Cordova. Cordova told Salinas to drop her off at a friend's house because she was scared to be seen in the car and to be found with the dead woman's baby. Salinas stopped the car in a random neighborhood, took the baby out of the car, placed it on a doorstep, rang the bell, and ran back to the car. Cordova claimed they did not drive away until they saw some "old ladies" come out and get the baby.

At the end of the interview, Cordova said she and Salinas had planned other crimes together in the past, such as carjacking and burglary, in which the gun "just pops out to scare people not to kill." She also said she expected Salinas to try to shift the blame for shooting Arias onto her.

After interviewing Cordova and Salinas separately, Wills interviewed them together. He reassured Cordova that Salinas was not accusing her of the shooting. Then he said their stories were "a little bit different." He told Cordova he believed she was "minimizing" her role in the shooting.

Wills first contrasted Cordova's claim that she did not shoot the man who gave them a ride at the grocery store because she did not have the heart to shoot a kind stranger, with Salinas's account that the reason Cordova did not shoot was simply that Salinas opened the car door prematurely, and Cordova was concerned the gunshot would be overheard. Cordova admitted that Salinas's explanation was somewhat accurate, but she also was "kind of scared of doing it."

Next, Wills revealed that Cordova told him that after their failed attempt to carjack the man, Salinas grabbed the gun and declared she was going to get a car. Wills pointed out that Salinas had said Cordova was the one who took the gun and said, "Let's find someone. I'm gonna shoot."

Cordova then admitted it was indeed she who grabbed the gun and urged Salinas to help her find a new target. Wills then asked Cordova if, while Arias was distracted, talking on her mobile telephone to the babysitter, Cordova turned around in her seat and asked Salinas something. Cordova shook her head no. Salinas laughed and said, "Dayana, . . . you went like that fool. [¶] You were like, are you gonna do it?" Cordova claimed she "really d[id]n't even remember." Then she said she "probably" said those things.

When asked whether she specifically said to Salinas, " 'You need to shoot her,' " Cordova told Wills, "Probably, probably not." Wills pointed out that Cordova said she and Salinas did not discuss their plan further, but Salinas said they talked while Arias was inside the babysitter's house. Salinas agreed they discussed directing Arias to a spot where Salinas would shoot her. Cordova did not dispute Salinas's recollection on this point.

Salinas said that after she shot Arias, Cordova said, " 'Let's get out of here,' " and they pushed Arias out of the car together. Cordova then admitted it was she who told Salinas to get out of the car and to remove Arias's body from the car, and not the other way around. Cordova admitted this differed from what she previously told Wills.

Wills also asked about the discrepancy in their accounts regarding how they disposed of Arias's baby. He explained that Salinas admitted she set the baby on a doorstep and left. However, Cordova said they waited until someone came out of the house. Cordova insisted they waited until a woman came out. At that point, Salinas said, "It was like barely somebody was coming out but barely. But I didn't see . . . the person, the actual person and we ran to the car door."

Finally, Wills told Cordova that Salinas stated Cordova test fired the gun to make sure it would do the job. He pointed out that Cordova had neglected to mention this fact. Cordova admitted she did in fact test fire her father's gun in the yard before they left for the grocery store parking lot to carjack someone.

Wills told Cordova and Salinas he felt satisfied with their accounts and that he would bring them something to eat. He then left the room. Cordova told Salinas, "I was so scared[,] and then the two hugged and laughed. Cordova called Salinas stupid for having driven Arias's car around. She said she knew Salinas was going to get caught, and so she had been preparing to flee, but the police arrived too quickly.

Cordova expressed surprise when Salinas told her they would be kept in custody that night. She said she thought she heard someone say Arias was alive and in the hospital. Cordova laughed about the way her arrest had transpired and then laughed again when she realized the shirt Salinas was wearing at the moment was one she stole from the dead woman's car.

Cordova remarked that the two of them might "get put away." She repeated, however, that she thought Arias might still be alive. Salinas said, "Shut the fuck up! She

was like . . . ," and simulated the victim convulsing after Salinas shot her. Cordova laughed.

Cordova asked Salinas if Arias was still breathing after Salinas shot her. Cordova laughed as she explained she heard someone refer to the victim as "Mom" and say she was in the hospital. Wills came back into the room and told them Arias had died, her child had been "orphaned"[sic], and that Cordova and Salinas would be booked shortly for murder and kidnapping. Then he left the room again.

Cordova and Salinas expressed dismay over the charges. Cordova remarked, "No wonder they brought us ten dollar hamburgers and shit." Salinas said it had been difficult for her to admit it was she who shot Arias. Cordova said she had considered denying any involvement in the shooting, but then she realized Salinas might admit everything. Cordova said, "Fuck it, fool. We did it. Now we have to suffer the consequences." She remarked, "Fuck. Our stupid ass idea about killing people fool." Then she said, "[S]he wanted to die anyways. Nobody told her fucken ass to give us a ride."

The People argued that Cordova's changing responses, minimization of her role in the killing, and her callous response as evidenced in the transcripts of her police interviews provided overwhelming support for their argument that she should be sentenced to LWOP.

In response to the People's position, at the resentencing hearing, Malek, whose report was included as an exhibit to Cordova's sentencing brief, testified on behalf of Cordova. She said that a person aged 16 years 10 months does not have the same brain maturity as an adult. Such a person therefore would likelier be more impulsive and less

adept at problem solving. Juveniles often act rashly instead of rationally. A child's character is not fully formed, so it is less likely his conduct is evidence of incorrigibility. However, female brains develop faster and reach maturation earlier than males.

In Malek's opinion, Cordova was of borderline or low average intelligence. Cordova's substance abuse, as well as the physical and sexual abuse she suffered, made her "emotionally behind" and might have interfered with her brain development. Malek felt Cordova knew it was wrong to murder and carjack Arias and kidnap her baby, but did not fully understand the "long-term consequences" of her actions.

Malek said traumatized juveniles tend to gravitate toward "deviant" peers, from whom they seek acceptance. Traumatized juveniles also can be "emotionally numb" and can seem very callous. Malek believed Cordova was becoming more "in touch with her emotions" and "starting to develop empathy" while in juvenile hall, which showed that Cordova's criminal actions were not signs of "irretrievable depravity." Malek believed Cordova's trauma and substance abuse problems could be treated effectively, and she could be reformed. In her opinion, Cordova's conduct when she murdered and carjacked Arias and abandoned the baby, and the way she acted afterward, were the result of "transient immaturity."

On cross-examination, Malek admitted adults also make poor decisions, and that juveniles are simply likelier to make poor decisions due to their continuing brain development. Malek conceded that, Cordova at age 16 years 10 months, could have had a brain as developed as that of an 18- year-old or 19-year-old man. Although Cordova knew committing a murder was wrong, in Malek's opinion, Cordova did not appreciate

the long term legal consequences of murdering Arias. Malek testified she saw "a lot of immaturity" when she viewed the videos of Cordova being interviewed by Wills and talking with Salinas.

Malek admitted that she had not administered any tests to Cordova, yet she believed Cordova was of borderline intelligence. She acknowledged, however, that Clark, who did test Cordova, believed Cordova to be of average intelligence, accounting for her difficulties with the English language. Malek also admitted Cordova's poor academic performance was largely caused by her truancy and lack of fluency in English. Malek agreed that Cordova did not actually suffer from any intellectual disability. Malek also acknowledged that a person of average or below average intelligence would be capable of concealing, lying, and obfuscating to avoid criminal liability. However, in Malek's opinion, Cordova's and Salinas's failure to dispose of the car after the murder showed their lack of sophistication. Malek also suggested that the admissions Cordova made in the joint interview when confronted with Salinas's confessions "could be" the result of peer pressure from Salinas.

Malek admitted that Cordova and Salinas "definitely" formulated a plan to shoot and kill someone to take his or her car, which demonstrated some sophistication, and that Cordova took an active role in the planning and execution of the crimes. Malek also admitted that Cordova's laughing about the murder and mocking the victim's suffering reflected more than mere emotional numbing; however, she asserted Cordova's trauma was to blame for her callousness. Confronted with the fact that in her August 25, 2009, probation interview, Cordova showed no remorse for her crimes, Malek conceded

Cordova appeared "extremely callous," but again explained Cordova's lack of reaction as a product of her "emotional numbing."

Malek also agreed that Cordova was not trapped at home, but rather was coming and going as she pleased, irrespective of her family's rules, at the time she committed the crimes in this case. She was also doing as she pleased, and was not controlled by societal or family strictures. Cordova's father drank excessively and he was physically violent, but Cordova's parents did not furnish her with drugs or alcohol, or encourage bad behavior; they tried to make her live right and attend school, and even moved to another city to try to keep appellant away from bad influences. Cordova had two younger brothers, both of whom were doing fine and were not involved in criminal activity.

In reaching her conclusion that the murder, carjacking, and kidnapping Cordova committed were the result of transient immaturity, Malek relied principally on three aspects. First, Cordova was not the shooter. Second, Salinas may have influenced Cordova. Third, Cordova had used drugs the day before committing the crimes and may have been "[c]oming down" from the drugs. However, Malek admitted that she did not confront Cordova with her admission that it was she who first suggested using a gun to carjack someone, obtained the gun, loaded it, test fired it, and showed Salinas how to shoot it. Additionally, Malek acknowledged that Cordova was shrewd enough to attempt to minimize her involvement when interviewed by the police, and that there was no evidence Cordova declined a favorable plea offer because of youth or inexperience.

After Malek concluded testifying, both parties were provided the opportunity to argue the resentencing issue. Cordova's attorney argued Cordova was "specially stunted"

by the "trauma" she experienced in childhood. He asserted that while Salinas was more than a year younger than Cordova, Cordova was "developmentally" younger. Counsel emphasized that Cordova had no prior contact with the juvenile justice system, and her only discipline at school had been for mocking another student's appearance. In contrast, Salinas was involved in gangs and sold drugs. Cordova's attorney also maintained that Cordova's home environment was "maladaptive," involving domestic violence and sexual abuse. He also argued that because Cordova could have but did not shoot the first intended victim, she showed that she was merely an aider and abettor of the "smarter," "savvy" Salinas. Counsel additionally characterized Cordova's apparent callousness and lack of remorse after the killing as a "coping mechanism."

Counsel also argued Cordova had no prior experience with the criminal justice system, and she had a "mind-blowing . . . lack of understanding of the ramifications" of talking to the police. Finally, Cordova's counsel pointed out Cordova was showing emotional development and remorse, which, in addition to Malek's opinion, supported the conclusion that Cordova could be rehabilitated.

In response, the People argued Cordova was almost 17 years old when she committed the subject crimes. The People also emphasized that the crimes were the product of a plan, a plan that Cordova and Salinas practiced and discussed. The People asserted that Cordova was not suffering from any intellectual disability and knew that killing Arias, taking her car, and abandoning her baby were wrong.

The People admitted that the domestic violence and episodes of sexual abuse in Cordova's home life obviously impacted her life. That said, the People underscored that

Cordova's parents had actively tried to steer her on the right path, even going so far as relocating the family to remove Cordova from a bad environment. The family did not engage in criminal activity or encourage Cordova to engage in such activity. Moreover, Cordova demonstrated her ability to remove herself from her home environment whenever she felt like it.

The People also argued that Cordova's relative youth appeared to have no effect on her ability to deal with law enforcement. For example, Cordova minimized her own involvement and tried to shift the blame to the younger Salinas, and did not admit the extent of her involvement until she was confronted with Salinas's contrary admissions in front of both Salinas and the detective. The People insisted that no plea bargain was offered thus Cordova's age could not have impacted the plea bargaining process.

Turning to the circumstances of the crime, the People argued that Cordova's involvement was extensive. Together with Salinas, Cordova planned to carjack and kill someone. It was Cordova who introduced the idea of using a gun, then she retrieved the gun, loaded the gun, and showed Salinas how to fire it. At the grocery store, Cordova chose the victim for the attempted carjacking. She also chose the car and the victim of the actual murder and carjacking. Once inside that car, even knowing Arias's baby was about to join them, Cordova egged Salinas on, gesturing and asking if Salinas was "going do it." Afterward, Cordova laughed about the murder, and mocked the victim and blamed her for her own death. The People explained that Cordova's behavior was of a type that even courts and prosecutors rarely see; "the callousness exhibited both during

the commission of the killing and afterwards really put[] Dayana Cordova in a category all her own."

Finally, the People addressed Malek's assertion that Cordova could be rehabilitated. The People argued the court should consider Malek's testimony skeptically because "every time she had an opportunity to characterize something in a more innocent light, she did so." It appeared, therefore, that Malek felt Cordova should not be sentenced to LWOP, and that she was tailoring her responses to that end, which made her credibility "suspect."

After hearing Malek's testimony as well as argument from counsel, the court explained that it would not render its decision until 4:00 p.m. the next day. The court indicated that it "want[ed] to have plenty of time tomorrow to get to look at everything, and [it] didn't want to rush through it."

When the parties reconvened the next day, the court began by addressing the LWOP sentence it gave Cordova in 2009 and acknowledged that, under *Miller, supra*, 567 U.S. 460, such a sentence "violates the Eighth Amendment for all but the rarest of juvenile offenders; those whose crimes reflect permanent incorrigibility." The court explained:

"[T]he question before the Court is whether the defendant's crime reflects irreparable corruption resulting in permanent incorrigibility rather than transient immaturity. If this Court finds defendant's crime to reflect irreparable corruption resulting in permanent incorrigibility, it may reimpose the sentence of life without the possibility of parole. If instead the Court finds the crime to be the result of defendant's transient immaturity, it may not reimpose that sentence. In order to decide this ultimate question, a sentencing Court must consider particular factors which effectively divide into

five categories. Namely, evidence regarding the defendant's level of maturity at the time of the crime; the defendant's family environment; the circumstances of the crime; the existence of youth-related incompetency that prevented the defendant from being convicted of a lesser crime, and the defendant's possibility of rehabilitation."

The court then thoroughly discussed the five *Miller* factors, including detailing how the evidence presented applied to the subject factors. After doing so, the court explained its reasoning in painstaking detail:

"The Court must now look at all the factors and decide whether Cordova is that rare minor whose crime reflects irreparable corruption resulting in permanent incorrigibility rather than transient immaturity.

"First, the Court finds that despite the minor's difficulties at home and at school, she was nonetheless in conjunction with Salinas able to articulate an objective, a plan to achieve that objective, and modify the plan based on changing circumstances in order to adapt to secure the objective. Despite drug use and as yet fully developed brain, she was able to stay focused on the objective over a number of hours, despite repeated setbacks and obstacles that stood in her way.

"In the opinion of the Court, her conduct that day reflected not transient rashness or inability to assess consequences, but rather just the opposite: A single-minded focus and the ability to adapt on the fly to secure an objective. This almost-17-year-old girl knew exactly what she was doing. And the opinion of the Court is no amount of future neurological development would resolve what is already present in her mind: The ability to conspire to kill to secure an object.

"Emotional damage and physical trauma notwithstanding, what stands out to this Court is the fact that the parents in their own way were trying to get Cordova on the right track. The question for the Court is whether her home life dictated the choices she made, or whether she was making conscious decisions despite her less than ideal environment.

"The Court feels it was the latter and not the former that dictated her conduct. Indeed, it appears that she was able to extricate herself from her home situation whenever she felt like it, regardless of the wishes of her parents.

"In short, this act was not the product of her environment, but rather the product of [a] series of choices she made herself on that faithful day.

"When looking at the circumstances of the crime, what the Court sees is a minor working in concert with another to carry out a gruesome murder in order to get a car to go to Knott's Berry Farm. This, despite the fact that Salinas's boyfriend was coming to pick them up, and they knew they would probably be too late to get there in any event. There is no doubt Salinas effected what happened that day, but no more and no less than did Cordova's participation in the crime. To say she was not the shooter or didn't tell Salinas to kill the victim, for this Court, makes no difference. She was involved in the plot from the beginning, secured the weapon and the required ammunition, and actually showed Salinas how to shoot the gun. She may as well have been in the back seat and pulled the trigger herself for all the support and encouragement she gave to Salinas that day.

"Even after the shooting, Cordova helped extricate the body from the car and dumped it in the street, all the while with the baby in the back. Instead of running off

after the shooting, she got back in the car and was involved in leaving the child on the doorstep of a stranger.

"As far as backing out of killing the first potential victim, instead of simply walking away, she doubled down and worked with Salinas to focus on yet another victim. Changing direction, altering your sights, and considering different alternatives are hallmarks of a person who is purpose driven and intellectually adept, not someone who can't assess possible outcomes and consequences deriving therefrom.

"In fact, when you look at the interview what stands out is Cordova engaging in deception to take the focus off her conduct entirely and blame another for a crime she knew she was involved in. In the opinion of the Court, this is the very definition of assessing consequences and acting in accordance with avoiding the same.

"In considering whether Cordova's youth-related incompetency prevented her from being convicted of a lesser crime, the Court finds that no plea bargain was offered that she could have considered, and that Dr. Clark found that she was of average or below average intelligence and could cooperate with her counsel. The transcript of the interview speaks not of a minor out of her depth, but rather one who willingly engaged officers in a high stakes game of gotcha. She lied, misdirected, vacillated depending on the questions being asked. Instead of being terrified of what was going on around her and the environment in which she found herself, she was enjoying eating a burger and talking about the crime to Salinas.

"Although Dr. Malek felt her conduct was maladaptive behavior due to a traumatic event, what the Court saw during that interview and reread in the transcript was a minor who appeared, at the very least, willing to engage with law enforcement.

"The possibility of rehabilitation in this case requires the Court to balance an almost 17-year-old girl's lack of criminal record and improvement in juvenile hall against the conduct the minor displayed on the day of the murder. There is no way for the Court to predict if the minor can be rehabilitated. The Court only has what happened in the past to try to predict a particular outcome some time in the future. In doing so, the Court starts from the proposition that the minor's brain is not as developed as it will be when she matures. And furthermore, that the minor's character is less well formed than that of an adult's.

"This being said, this Court cannot escape the conclusion, based on the evidence it heard at trial, that the minor's brain was well formed enough to make conscious decisions, weigh the pros and cons of those decisions, adapt her behavior to changing circumstances to achieve objectives, and try and avoid responsibility when caught.

"[Cordova's counsel] said it best in his closing statement when he said the Court needs to ask two questions: One, the inability to correct. And two, the potential for reform. The Court has been pondering these questions since the end of that hearing yesterday. Given the totality of the circumstances in the case, and having heard all the evidence at trial, the Court must answer those two questions in the positive as to question one and negative as to question two. In other words, in the opinion of the Court, there is no way to correct this minor's behavior. And two, she has no potential for reform.

"In sum, considering all the factors and all the evidence, the Court finds that the defendant is indeed the rare juvenile offender whose crime does not reflect the transient immaturity of youth, but rather irreparable corruption resulting in permanent incorrigibility. That is the defendant is the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible."

The court then sentenced Cordova to LWOP. Cordova timely appealed.

DISCUSSION

I

WHETHER THE SUPERIOR COURT PROPERLY SENTENCED CORDOVA TO LWOP

A. Cordova's Assertions

Cordova challenges her LWOP sentence on three grounds. First, she argues the court applied the incorrect standard in resentencing Cordova. To this end, Cordova maintains that we can review the superior court's decision independently and reach our own conclusions regarding Cordova's future potential for rehabilitation without considering any of the superior court's findings. Second, Cordova argues that the facts before the superior court did not show that she was incapable of rehabilitation. In other words, the record does not support a finding that Cordova's homicide crime reflects permanent incorrigibility. Thus, under *Miller, supra*, 567 U.S. 460, an LWOP sentence was not proper. Third, Cordova argues for a new rule in juvenile sentencing that an LWOP sentence is never permitted for a juvenile who aids and abets a homicide crime.

B. The Superior Court's Application of *Miller*

Numerous cases have summarized the evolution of the law regarding sentencing of juvenile offenders, and we need not restate it here. (See, e.g., *People v. Franklin* (2016) 63 Cal.4th 261, 273-275; *People v. Bell* (2016) 3 Cal.App.5th 865, 873-874.)

"Under *Miller*, a state may authorize its courts to impose life without parole on a juvenile homicide offender when the penalty is discretionary and when the sentencing court's discretion is properly exercised in accordance with *Miller*." (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1379 (*Gutierrez*).) The *Miller* factors are: (1) a juvenile offender's "chronological age and its hallmark features--among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) "the family and home environment that surrounds [the juvenile offender]--and from which he cannot usually extricate himself--no matter how brutal or dysfunctional"; (3) "the circumstances of the homicide offense, including the extent of [the juvenile offender's] participation in the conduct and the way familial and peer pressures may have affected him"; (4) whether the juvenile offender "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth--for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys"; and (5) "the possibility of rehabilitation." (*Miller, supra*, 567 U.S. at pp. 477-478; *Gutierrez, supra*, 58 Cal.4th at pp. 1388-1389.)

Miller "requires a trial court, in exercising its sentencing discretion, to consider the 'distinctive attributes of youth' and how those attributes 'diminish the penological justifications for imposing the harshest sentences on juvenile offenders' before imposing

life without parole on a juvenile offender." (*Gutierrez, supra*, 58 Cal.4th at p. 1361, citing *Miller, supra*, 567 U.S. at p. 472.)

Cordova argues that the superior court did not properly apply the *Miller* factors. Further, relying on *In re Berg* (2016) 247 Cal.App.4th 418 (*Berg*), Cordova maintains that we can independently make our own determination of Cordova's future potential while considering the possibility of rehabilitation. In other words, Cordova argues that *Berg* allows us to make factual findings and ultimately make our own sentencing determination. Cordova's reliance on *Berg* is misplaced.

In *Berg*, 247 Cal.App.4th 418, the defendant, a juvenile when he committed murder, was sentenced to an LWOP term in 1997. (*Id.* at p. 423.) In 2014, the defendant filed a petition for writ of habeas corpus in which he requested that the court vacate his sentence and order a new sentencing hearing because the sentencing court's imposition of an LWOP sentence was unconstitutional under *Miller, supra*, 567 U.S. 460. (*Berg, supra*, at p. 423.) The court ruled that the sentencing court's statement of reasons for imposing an LWOP sentence was " 'inconsistent with the evolving Eighth Amendment jurisprudence and the requirements of *Miller, supra*.' " The court granted the petition, vacated the defendant's sentence, and ordered the matter be set for resentencing. (*Berg, supra*, at p. 423.)

On appeal, the People argued that a resentencing hearing was unnecessary because the sentencing court took " 'into account *Miller*-type youth-oriented factors, and decided that LWOP was the appropriate sentence.' " (*Berg, supra*, 247 Cal.App.4th at p. 427.) We determined the People's contention raised a question of law subject to de novo

review. (*Ibid.*) We determined that the record before us in that case did not reflect that the sentencing court ever considered the ultimate question posed by the courts in *Miller*, *supra*, 567 U.S. 460 and *Gutierrez*, *supra*, 58 Cal.4th 1354, namely did the defendant's crime reflect transient immaturity or irreparable corruption. (*Berg*, *supra*, at p. 431; *People v. Chavez* (2014) 228 Cal.App.4th 18, 33.) In addition, we noted that given the court sentenced the defendant before the opinions in *Miller* and *Gutierrez*, the record did not reflect that the sentencing court considered all relevant evidence related to whether the court could lawfully impose an LWOP sentence on the defendant. (*Berg*, *supra*, at p. 431.) As such, we agreed that the lower court properly determined that, in sentencing the defendant, the sentencing court did not exercise its discretion in accordance with the juvenile LWOP sentencing requirements established in *Miller* and a resentencing hearing was warranted. (*Berg*, *supra*, at p. 432.)

With this summary of *Berg*, *supra*, 247 Cal.App.4th 418 in mind, clearly that case is not instructive here. Unlike the defendant in *Berg*, Cordova received a resentencing hearing that occurred after *Miller* was issued. Additionally, we find nothing in *Berg* that supports Cordova's position that we can independently consider the evidence in the record and impose a new sentence on Cordova. Indeed, we are unaware of any authority that would allow us to do any such thing. It is not this court's role to issue sentences for defendants.

Nevertheless, Cordova insists the superior court "applied the incorrect standard" when resentencing her by "balanc[ing] all of the *Miller* factors[.]" and "compound[ing] its error by relying mainly on one factor, the commitment offense." Cordova asserts the

court should not have weighed or balanced the *Miller* factors, but instead, used those factors to determine whether transient immaturity requires some degree of leniency or irreparable corruption must be punished as severely as possible. Based on the record before us, the superior court appropriately used the *Miller* factors to make the very determination that Cordova argues must be made.

After considering the evidence and hearing argument, the court explicitly stated it must determine whether Cordova's crime reflects irreparable corruption resulting in permanent incorrigibility rather than transient immaturity. Further, after summarizing the evidence and how it related to each of the *Miller* factors, the court again reiterated the essential question before it: "The Court must now look at all the factors and decide whether Cordova is that rare minor whose crime reflects irreparable corruption resulting in permanent incorrigibility rather than transient immaturity." Below, the superior court clearly understood that critical question before it under *Miller, supra*, 567 U.S. 460 and *Gutierrez, supra*, 58 Cal.4th 1354.

In addition, the court meticulously discussed the evidence and how it related to each factor. Because the court was so adept in explaining its analysis, we take the unusual step and include the court's analysis verbatim here.

"First, defendant's level of maturity at the time of the crime. This factor involves the juvenile offender's chronological age and its hallmark features, among them, immaturity, impetuosity, and failure to appreciate risks and consequences. This factor recognizes that juvenile and adult minds are different in that the former is prone to transient rashness, proclivity for risk, and inability to assess consequences. This both

reduces the minor's moral culpability and increases the possibility that later neurological development will resolve those issues.

"In this case, being the minor was 16 years and nine months old at the time of the commission of the crime, there is evidence before the Court that minor's [sic] brains are different than adults in the sense that the prefrontal cortex is not as developed. Given the lack of development, they are more prone to make riskier choices and do not always understand the consequences of the conduct in which they are engaged.

"Making matters worse is the evidence before the Court that the minor used drugs, specifically methamphetamine and drank alcohol to excess, thus making the minor even more likely to engage in antisocial and risky behavior.

"The minor also struggled in school. Although Dr. Malek testified the minor was below average to borderline below average in intelligence, she did concede that minor's first language was Spanish and that she skipped school frequently. Additionally, that Dr. Joy Smith Clark concluded the minor was probably of average intelligence. The minor['s] grades were Ds and Fs, which is not surprising for someone skipping school, but improved to As and Bs while in juvenile hall. In sum, the Court concludes the minor was of average or slightly below average in intelligence.

"She also testified that minors are more vulnerable to negative peers and can have difficulty stopping behavior once it has gotten started. Indeed, one of her points of emphasis is the minor was facing peer pressure by Salinas to follow through with their plan and she was responding to a highly charged incident. Having said that, she also

stated that everyone can stop their behavior. And that minors, despite their lack of maturity, can conform to social norms.

"Dr. Malek felt that the minor was not living life as an adult and that the crime in question was an act of transient immaturity brought on by trauma, a bad home life, and substance abuse. Having said that, Dr. Malek conceded that the minor knew murder was wrong, knew that a gun was a dangerous weapon, knew that what she did was wrong based on the fact that she didn't tell her friends, and that she was developed enough intellectually to create a plan to kill and that the crime was on some level -- and I quote her from her testimony -- 'of at least limited sophistication.'

"Finally, she agreed that the crime was not carried out in a heated moment of passion but rather was drawn out over a number of hours where much discussion occurred between the two participants about who, when, where and how the crime would be executed.

"Second, the defendant's family environment. This factor recognizes that a minor cannot usually extricate herself from her family home environment, no matter how brutal or dysfunctional, and it involves a consideration of relevant environmental and invulnerability -- vulnerabilities such as evidence of childhood abuse or neglect, familial drug or alcohol abuse, lack of adequate parenting or education, prior exposure to violence, and susceptible to psychological damage or emotional disturbance.

"Here, the evidence before the Court is mixed. On the one hand, the minor was clearly raised in a dysfunctional family. She was exposed to domestic violence and parental substance abuse. Additionally, she herself was physically and sexually abused.

Although there is evidence that she engaged in violence towards her father as well. By all accounts the father was gone frequently, was a strict disciplinarian. The mother lacks. Although there were house rules, the evidence shows she violated them often. Treatment for the familial dysfunction was neither sought nor rendered. She frequently snuck out of the house to engage in among other activities, drinking, taking drugs, having sex, and generally running the streets.

"There was also evidence before the Court that the parents moved from Perris to Lake Elsinore to try and remove the minor from the negative environment in which she was living. In sum, in the opinion of the Court, the minor was both acting in ways consistent with her negative home environment and also actively fighting against that environment when she chose to do so.

"Third, the circumstances of the crime, this includes the extent of the minor's participation in the conduct and the way familial and peer pressures may have [a]ffected her. Also relevant is whether substance abuse played a role in the minor's commission of the crime. Here, the minor and Salinas concocted a plan to steal a car to go to Knott's Berry Farm. The plan evolved over a period of several hours.

"Initially, the plan appears to be simply stealing a car. Being unsuccessful, Salinas suggested using a knife to scare someone into turning over their car. Cordova -- Ms. Cordova must have thought that a knife was not sufficient inducement and suggested getting a gun she knew her father kept in her home. They proceeded to her house. The minor got the gun, loaded the gun, and showed Salinas how to fire it.

"They then went to Albertsons to find a victim. At this point the plan was to murder the owner of the car so as not to leave any witnesses. At this point, Cordova possessed the handgun. Ultimately they backed out of carjacking the first victim. Cordova, despite having the gun, could not bring herself to shoot the victim. The minors then went to a park to figure out what to do next. They mulled over their plan and decided to try again. This time Cordova gave Salinas the gun, and they went in search of their next victim. Cordova chose a particular vehicle, a Chrysler 300, and they went into a store to try to find the owner. They ultimately identified the owner of the vehicle, a young woman who worked at the store.

"In a terrible twist of fate, the victim actually offered the two a ride, despite the fact that Salinas's boyfriend was on his way to pick them up. Salinas sat in the back. Cordova in the front. On her way to dropping off the two minors, the victim, who was only 19 years old, stopped to pick up her baby from the babysitter. While the victim was going to the apartment to pick up her baby, Salinas and Cordova remained in the car and continued to plan on what to do next.

"The victim returned to the car and placed the baby in the back seat next to Salinas. The young mother was then directed to drive to a dark part of the street past the house in which Cordova lived. The victim parked. Salinas then shot the victim twice in the back of the head. The baby was still in the back seat and within just a few feet of the murder. Cordova reached over and unbuckled her seatbelt, and with the help of Salinas, pushed her body out of the car and into the street. They then drove off to Perris,

ultimately leaving the baby on the doorstep of a stranger for at least a period of four hours in the dark and the cold.

"Although both sides argue about who played a more dominant role in the murder, the fact remains that both were involved in the planning of the crime. They both wanted to go to Knott's Berry Farm, and they were both willing to use lethal force to achieve that end. Indeed, it was Cordova who actually escalated the use of force available by offering to get the gun, get the bullets, and teach Salinas to fire the weapon. Although Cordova was not the shooter, she nonetheless helped get the victim's body out of the car and went with Salinas to Perris with the infant in tow.

"Additionally, both were involved in shooting -- in choosing the first victim at the Albertsons, and both went to the park to figure out what to do next after failing to follow through on their plot against the man. From beginning to end they were each intimately involved and knew exactly what their objective was and how to achieve it

"In sum, Cordova and Salinas were both cheerleaders and planners in this gruesome murder. Although it is true that the corrected transcript states that Cordova told Salinas she didn't tell her to shoot her, the fact remains that she did everything possible to put Salinas in the position to carry out the execution. She may have said, 'I didn't tell Salinas to shoot the victim,' but her conduct says otherwise.

"In the opinion of the Court, neither one was the proverbial sheep, but rather both were the wolves in search of their prey.

"It is also the opinion of the Court that substance abuse did not play a significant role in this crime because it played out over a number of hours, over a considerable

distance, and involved two victims, not counting the getaway and the dumping of the baby on the doorstep. This was not a heat-of-the-moment, high-on-drugs mindset, but rather a product of considerable thought and premeditation on how to get to Knott's Berry Farm to enjoy the rides and entertainment, even if that included murder in cold blood of the unsuspecting victim, who through a twist of fate, offered the two minors a ride home.

"Four, the existence of a youth-related incompetency that prevented Ms. Cordova from being convicted of a lesser crime. This factor recognizes the features that distinguish juveniles from adults, but also puts them at a significant disadvantage in criminal proceedings, and involve such things as the juvenile defendant's inability to deal with police officers and prosecutors, including on a plea agreement, or her incapacity to assist her attorneys.

"Here, what is astonishing to the Court is Cordova's ability to deal with law enforcement and questioning the way she did, given what she had done and her total lack of experience with the criminal justice system. In her initial interview she denies even knowing about the murder, but rather that Salinas picked her up and they went on a joyride. When pressed, she then concedes knowing about the murder, but that it was all Salinas's doing. Only later does she begin to admit the details of the crime, and then only after going back and forth on what she remembered and what she did not.

"In her conversation with Salinas outside the presence of law enforcement, she focuses almost entirely on her punishment and not what she actually did to the young victim, not to mention the baby. The Court would have expected someone of her age and experience to never even consider what her punishment would be, but rather totally on

what had occurred and the emotion of having been involved in such a horrendous crime.

"Finally, she readily accepts food offered by the detectives. And while eating burgers, callously mocks the victim, despite having been involved in the gruesome murder, a body dump in the street, and getaway with an infant in the back. Based on the interview the Court observed at the trial, it is hard to argue she was at a disadvantage to anyone, including seasoned homicide detectives.

"As far as any rejected plea bargain offer, the Court had -- the Court was told none was offered. This Court, who handled the entire trial, was never told of any issues of whatsoever regarding Cordova's ability to assist in her defense. In fact, was found competent to stand trial by Dr. Clark.

"Number five, a sentencing Court must consider any evidence or other information in the record bearing on the possibility of rehabilitation, including past criminal history. This factor recognizes a child's character is not as well formed as an adult's, her traits less fixed, and her actions less likely to be evidence of irreparable depravity.

"Here, both sides agree that Cordova had no criminal history other than for driving without a license and failing to attend school. There is evidence that although Cordova had a rocky start in juvenile hall, she ultimately became a mentor in juvenile hall and got her grades up to As and Bs.

"[Cordova's counsel] correctly points out that one should be suspicious of public displays of remorse, and Cordova has shown remorse repeatedly through her emotions while in confinement in juvenile hall. The People argue correctly that sincere remorse or lack thereof is manifested in how one acted at the time the crime was committed. In

other words, Cordova and Salinas alone in the interview room mocking and laughing at the victim. In the words of Cordova, 'It's 'cause she wanted to die anyways. Nobody told her fuckin' ass to give us a ride.' Additionally, both laughing as Salinas mocks the victim convulsing as she lay bleeding in the street from two point blank gunshot wounds to the head.

"Of course, Dr. Malek and [Cordova's counsel] argue that this was a result of a maladaptive coping mechanism due to a highly stressful traumatic event. The People argue that it is exactly what it purports to be, a callousness on unimagined scale by two child murderers who really do think of the victim as a piece of garbage who deserved to die as to be so stupid as to pick up two girls walking down the road.

"The court must now look at all the factors and decide whether Cordova is that rare minor whose crime reflects irreparable corruption resulting in permanent incorrigibility rather than transient immaturity."

The superior court assiduously discussed the *Miller* factors then carefully analyzed how the evidence addressed each factor. Cordova eschews any discussion of the court's exhaustive consideration of the evidence and simply contends the court placed too much weight on one factor, the circumstances of the homicide crime. However, Cordova does not cite to any portion of the record to support this assertion. As such, we summarily reject this argument.⁴ (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573

⁴ Ironically, although Cordova argues the superior court erred in relying primarily on only one of the *Miller* factors, she urges us to ignore four of the five factors to focus solely on the fifth *Miller* factor: the possibility of rehabilitation.

["Perhaps the most fundamental rule of appellate law is that the judgment challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error."].)

In addition, we are not persuaded by Cordova's argument that *Montgomery, supra*, 136 S.Ct. 718 requires reversal here. In *Montgomery*, the United States Supreme Court held *Miller* applies retroactively on collateral review. In reaching that conclusion, the court observed, "Because *Miller* determined that sentencing a child to [LWOP] is excessive for all but 'the rare juvenile offender whose crime reflects irreparable corruption,' ' [citation], it rendered [LWOP] an unconstitutional penalty for 'a class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. . . . [¶] . . . Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to [LWOP]. After *Miller*, it will be the rare juvenile offender who can receive that same sentence. . . . *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption." (*Montgomery, supra*, at p. 734.)

We do not read *Montgomery, supra*, 136 S.Ct. 718 as modifying *Miller, supra*, 567 U.S. 460 or changing how a court should consider and/or analyze the *Miller* factors. Instead, the Supreme Court made clear that the requirements of *Miller* in sentencing a juvenile were to be applied retroactively. The court did not proclaim that sentencing courts were to weigh the *Miller* factors differently or simply focus on the last factor. In addition, the sentencing court in the instant action clearly understood the dictates of the Supreme Court in both *Miller* and *Montgomery* when it addressed Cordova's sentence as

imposed in 2009: "In 2009, this Court sentenced the defendant to a term of life without the possibility of parole for first-degree murder while she was still a minor. Subsequent case law beginning with the Supreme Court's decision in *Miller* has made it clear that such a sentence violates the Eighth Amendment for all but the rarest of juvenile offenders; those whose crime reflects permanent incorrigibility."

In summary, we are satisfied that sentencing court correctly considered the *Miller* factors to determine whether Cordova was the rare juvenile offender whose crime reflects irreparable corruption. (See *Miller, supra*, 567 U.S. at pp. 479-480; *Montgomery, supra*, 136 S.Ct. at p. 734.)

C. The Sentencing Court's Exercise of Discretion

Having concluded that the sentencing court correctly considered the *Miller* factors in imposing Cordova's sentence, we next turn to Cordova's second argument that the facts before the court did not show that Cordova was incapable of rehabilitation. As a threshold matter, we note that Cordova's second argument is less than clear.

To some extent, it appears that Cordova is rearguing her first challenge, namely the court did not properly consider and/or apply the *Miller* factors. We reject this argument for the reasons discussed above.

In the alternative, Cordova seems to be making a substantial evidence argument. In her opening brief, she summarizes the evidence on which the court relied to sentence her to LWOP. She then focuses on other evidence and explains how that evidence shows she was capable of rehabilitation. Stated differently, Cordova seems to contend that substantial evidence does not support her sentence. However, we do not review a

defendant's sentence for substantial evidence. Instead, we analyze whether the sentencing court properly exercised its discretion. (See *People v. Sandoval* (2007) 41 Cal.4th 825, 847.) The same standard applies to juvenile sentencing. (See *Gutierrez, supra*, 58 Cal.4th at p. 1379 ["Under *Miller*, a state may authorize its courts to impose life without parole on a juvenile homicide offender when the penalty is discretionary and when the sentencing court's discretion is properly exercised in accordance with *Miller*"]; *People v. Blackwell* (2016) 3 Cal.App.5th 166, 199 (*Blackwell*) [applying abuse of discretion standard in reviewing imposition of LWOP sentence on juvenile homicide offender].) Accordingly, to the extent Cordova claims substantial evidence does not support her sentence, we decline to engage in such a review. Likewise, we do not reweigh the evidence in review of her sentence.

"A court's exercise of discretion will not be disturbed on appeal absent a showing that the court acted in an arbitrary, capricious, or patently absurd way, resulting in a manifest miscarriage of justice. [Citation.] . . . '[A] 'decision will not be reversed merely because reasonable people might disagree. 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.' ' ' ' ' ' (*Blackwell, supra*, 3 Cal.App.5th at pp. 199-200.)

Cordova does not explain how the court abused its discretion in imposing an LWOP sentence. To the contrary, the court thoughtfully, thoroughly, and carefully exercised its discretion here. It considered the *Miller* factors in detail. It explained how it considered the evidence, made factual findings, and illuminated how the evidence applied to the *Miller* factors. The court correctly framed the essential question before it:

Whether Cordova is that rare minor whose crime reflects irreparable corruption resulting in permanent incorrigibility rather than transient immaturity. In answering that question and imposing an LWOP sentence, the court comprehensively explained its reasoning. It considered all evidence before it, including evidence regarding Cordova's postconviction behavior in juvenile hall. Against this background, we conclude the court did not abuse its discretion in resentencing Cordova to LWOP.

D. An LWOP Sentence for an Aider and Abettor

For her final argument, Cordova asks this court to create a new constitutional rule. She contends that a court should not be permitted to sentence a juvenile to LWOP unless that juvenile personally killed or intended to kill the victim. To support her position, Cordova requests that we follow the concurring opinion in *Miller, supra*, 567 U.S. 460 wherein Justice Breyer wrote that the Eighth Amendment prohibits the sentencing of any juvenile to LWOP unless the juvenile killed or intended to kill the victim. (*Miller, supra*, at pp. 490-492, conc. opn. of Breyer, J.)

However, the majority in *Miller* did not adopt Justice Breyer's suggested categorical rule. Instead, the majority observed that the circumstances of the crime (which would concern whether a juvenile killed, intended to kill, or acted with reckless indifference to human life) was a factor affecting the juvenile's culpability for the offense that the court should consider in determining the proper punishment. (See *Miller, supra*, 567 U.S. at pp. 477-479.) Further, in requesting that we announce a categorical ban against LWOP for a juvenile who aids and abets a juvenile felony murder, Cordova seeks a significant extension of the United States Supreme Court's Eighth Amendment

jurisprudence. As an intermediate court of appeal, we do not believe our role is to make such pronouncements especially when Cordova has offered no evidence that a national consensus against imposing an LWOP sentence where a near 17-year-old defendant committed a homicide that would have rendered her eligible for the death penalty had she been an adult. (§ 190.2.) If such a new constitutional rule is to be proclaimed, it must originate with the United States Supreme Court, or at the very least, our state high court. We decline to adopt the concurring opinion in *Miller* as a new constitutional rule.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.